

HOUSE BILL No. 1008

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-6-9.8; IC 6-9; IC 6-10.

Synopsis: Local excise tax authority. Authorizes a fiscal body of a city, town, or county to impose any of the following local taxes: (1) A supplemental auto rental excise tax. (2) A local innkeeper's tax. (3) A food and beverage tax.

Effective: July 1, 2004.

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December 4, 2003, read first time and referred to Committee on Ways and Means.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1008

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-6-9.8 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]:

4 **Chapter 9.8. Uniform Supplemental Auto Rental Excise Tax**

5 **Sec. 1. Except as otherwise indicated, the definitions in**
6 **IC 6-6-9.7 apply throughout this chapter.**

7 **Sec. 2. As used in this chapter, "fiscal body" has the meaning set**
8 **forth in IC 36-1-2-6.**

9 **Sec. 3. As used in this chapter, "fiscal officer" has the meaning**
10 **set forth in IC 36-1-2-7.**

11 **Sec. 4. As used in this chapter, "unit" means a county, city, or**
12 **town. The term does not include a township.**

13 **Sec. 5. (a) This chapter applies to a unit that does not impose a**
14 **supplemental auto rental excise tax under another chapter of this**
15 **article. A unit that imposes a supplemental auto rental excise tax**
16 **under this chapter may not impose a supplemental auto rental**
17 **excise tax under another chapter.**



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(b) The fiscal body of a unit may adopt an ordinance to impose an excise tax, known as the unit's supplemental auto rental excise tax, upon the rental of passenger motor vehicles and trucks in the county for periods of less than thirty (30) days.

(c) The ordinance must specify that the tax expires on or before a specific date not to exceed thirty (30) years after the date of adoption of the ordinance.

(d) The supplemental auto rental excise tax that may be imposed upon the rental of a passenger motor vehicle or truck is five percent (5%) of the gross retail income received by the retail merchant for the rental.

(e) If a fiscal body adopts an ordinance under subsection (b), the fiscal body shall immediately send a certified copy of the ordinance to the department.

(f) If a fiscal body adopts an ordinance under subsection (b) before June 1, the supplemental auto rental excise tax applies to auto rentals after June 30 of the year in which the ordinance is adopted. If the fiscal body adopts an ordinance under subsection (b) after May 31, the supplemental auto rental excise tax applies to auto rentals after the last day of the month in which the ordinance is adopted.

Sec. 6. (a) The rental of a truck is exempt from the supplemental auto rental excise tax if the declared gross weight of the rented truck exceeds eleven thousand (11,000) pounds.

(b) The rental of a passenger motor vehicle or truck by a funeral director licensed under IC 25-15 is exempt from the supplemental auto rental excise tax if the rental is part of the services provided by the director for a funeral.

(c) The temporary rental of a passenger motor vehicle or truck is exempt from the supplemental auto rental excise tax if the rental is:

- (1) made or reimbursed under a contract or an agreement between a provider and person given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear;
- (2) made or reimbursed under a contract for mechanical breakdown insurance;
- (3) made or reimbursed under a contract for automobile collision insurance or automobile comprehensive insurance

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that covers the temporary lease of a vehicle to the person after the person's vehicle is damaged or destroyed in a collision; or (4) otherwise provided to a person as a replacement vehicle: (A) while the person's vehicle is repaired or serviced due to a defect in materials or skill of work, normal wear and tear, or other damage; or (B) until the person permanently replaces a vehicle that has been destroyed.

Sec. 7. The person that rents a passenger motor vehicle or truck is liable for the supplemental auto rental excise tax. The person shall pay the tax to the retail merchant as a separate amount added to the consideration for the rental. The retail merchant shall collect the tax as an agent for the state.

Sec. 8. (a) Except as otherwise provided in this section, the supplemental auto rental excise tax shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5.

(b) Each retail merchant filing a return for the supplemental auto rental excise tax shall indicate in the return:

- (1) all locations in the unit where the retail merchant collected supplemental auto rental excise taxes; and
- (2) the amount of supplemental auto rental excise taxes collected at each location.

(c) The return to be filed for the payment of the supplemental auto rental excise tax may be a separate return, combined with the return filed for the payment of the auto rental excise tax under IC 6-6-9, or combined with the return filed for the payment of the state gross retail tax, as prescribed by the department.

Sec. 9. (a) All revenues collected from the supplemental auto rental excise tax shall be deposited in a special account of the state general fund called the unit's supplemental auto rental excise tax account.

(b) On or before the twentieth day of each month, all amounts held in a unit's supplemental auto rental excise tax account shall be distributed to the unit.

(c) The amount to be distributed to the unit is the total supplemental auto rental excise taxes that were initially imposed and collected from within the unit. The department shall notify the unit's fiscal officer of the amount of taxes to be distributed to the unit.

(d) All distributions from the unit's supplemental auto rental excise tax account shall be made by warrants issued by the auditor

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of state to the treasurer of state ordering those payments to the unit.

(e) Taxes distributed to a unit under this section may be treated by each unit as additional revenue to fix its budget for the budget year during which the revenues are to be distributed to the unit. Taxes distributed to a unit under this section may be used for one (1) or more of the following purposes:

(1) Reducing the unit's property tax levy for the ensuing budget year.

(2) Providing property tax relief to taxpayers or classes of taxpayers, to the extent permitted by the Constitution of the State of Indiana.

(3) Paying debt service or lease rentals on:

(A) bonds;

(B) leases;

(C) obligations; or

(D) any other evidence of indebtedness of the unit.

(4) Paying the costs of any capital project.

(5) Use as operating revenue.

(6) Paying pension liabilities of the unit.

(7) Any other purpose that the fiscal body determines is necessary, wise, and in the best interests of the residents of the unit.

The department of local government finance may not reduce a unit's property tax levy by the amount of the taxes distributed to a unit under this section.

(f) The unit's fiscal body must approve an expenditure of taxes distributed to the unit under this section.

Sec. 10. A supplemental auto rental excise tax imposed under this chapter is a listed tax for the purposes of IC 6-8.1.

SECTION 2. IC 6-9-29-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 0.5. The definitions in IC 6-9-36 apply throughout this chapter. However, "unit" does not include a township.**

SECTION 3. IC 6-9-29-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. This chapter applies to all ~~counties~~ **units** imposing an innkeeper's tax under this article.

SECTION 4. IC 6-9-29-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1.5. (a) Unless otherwise provided in this article, a ~~county~~ **county** fiscal body that adopts an ordinance to impose, rescind, or increase or decrease the rate of a ~~county~~ **county** an innkeeper's tax must specify the effective date of the

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ordinance to provide that the ordinance takes effect:

(1) at least thirty (30) days after the adoption of the ordinance;

and

(2) on the first day of a month.

(b) If a ~~county~~ fiscal body adopts an ordinance described in subsection (a), it must immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

SECTION 5. IC 6-9-29-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. If an ordinance has been adopted requiring the payment of the innkeeper's tax to ~~the county treasurer~~ a **unit's fiscal officer** instead of the department of state revenue, the ~~county treasurer~~ **fiscal officer** has the same rights and powers with respect to collecting the ~~county~~ innkeeper's tax as the department of state revenue.

SECTION 6. IC 6-9-29-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. Upon a request by a ~~county auditor or treasurer,~~ **unit's fiscal officer**, the department of state revenue shall provide summary data regarding innkeeper's tax collections for the ~~county.~~ **unit.** This data may not include any confidential information. The department shall provide the summary data within ten (10) business days after the request is made.

SECTION 7. IC 6-9-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 36. Uniform Local Innkeeper's Tax

Sec. 1. (a) This chapter applies to a unit that does not impose an innkeeper's tax under any other chapter of this article. A unit that imposes an innkeeper's tax under this chapter may not impose an innkeeper's tax under another chapter.

(b) Subsection (a) does not prohibit a unit that:

(1) does not impose an innkeeper's tax under any other chapter of this article; and

(2) is located entirely within another unit that imposes an innkeeper's tax under any other chapter of this article; from imposing an innkeeper's tax under this chapter.

Sec. 2. As used in this chapter, "executive" has the meaning set forth in IC 36-1-2-5.

Sec. 3. As used in this chapter, "fiscal body" has the meaning set forth in IC 36-1-2-6.

Sec. 4. As used in this chapter, "fiscal officer" has the meaning set forth in IC 36-1-2-7.

Sec. 5. As used in this chapter, "gross retail income" has the

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1 meaning set forth in IC 6-2.5-1-5.

2 Sec. 6. As used in this chapter, "person" has the meaning set
3 forth in IC 6-2.5-1-3.

4 Sec. 7. As used in this chapter, "unit" means a county, city, or
5 town.

6 Sec. 8. (a) The fiscal body of a unit may levy a tax on every
7 person engaged in the business of renting or furnishing, for periods
8 of less than thirty (30) days, any room, lodgings, or
9 accommodations in any:

10 (1) hotel;

11 (2) motel;

12 (3) boat motel;

13 (4) inn;

14 (5) college or university memorial union;

15 (6) college or university residence hall or dormitory; or

16 (7) tourist cabin;

17 located in the unit.

18 (b) The tax does not apply to gross income received in a
19 transaction in which:

20 (1) a student rents lodgings in a college or university residence
21 hall while that student participates in a course of study for
22 which the student receives college credit from a college or
23 university located in the unit; or

24 (2) a person rents a room, lodging, or accommodations for a
25 period of thirty (30) days or more.

26 (c) The tax may not exceed the rate of five percent (5%) on the
27 gross retail income derived from lodging income only and is in
28 addition to the state gross retail tax imposed under IC 6-2.5.

29 (d) The unit's fiscal body may adopt an ordinance to require
30 that the tax be reported on forms approved by the unit's fiscal
31 officer and that the tax shall be paid monthly to the unit's fiscal
32 officer. If the ordinance is adopted, the tax shall be paid to the
33 fiscal officer not more than twenty (20) days after the end of the
34 month the tax is collected. If the ordinance is not adopted, the tax
35 shall be imposed, paid, and collected in the same manner as the
36 state gross retail tax is imposed, paid, and collected under IC 6-2.5.

37 (e) All the provisions of IC 6-2.5 relating to rights, duties,
38 liabilities, procedures, penalties, definitions, exemptions, and
39 administration are applicable to the imposition and administration
40 of the tax imposed under this section except to the extent those
41 provisions are in conflict or inconsistent with the specific
42 provisions of this chapter or the requirements of the county

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1 treasurer. If the tax is paid to the department of state revenue, the
 2 return to be filed for the payment of the tax under this section may
 3 be either a separate return or may be combined with the return
 4 filed for the payment of the state gross retail tax as the department
 5 of state revenue may, by rule, determine.

6 (f) If the tax is paid to the department of state revenue, the
 7 amounts received from the tax imposed under this section shall be
 8 paid monthly by the treasurer of state to the unit's fiscal officer
 9 upon warrants issued by the auditor of state.

10 Sec. 9. (a) All revenues collected from a unit's innkeeper's tax
 11 shall be deposited in a special account of the state general fund
 12 called the unit's innkeeper's tax account.

13 (b) On or before the twentieth day of each month, all amounts
 14 held in a unit's innkeeper's tax account shall be distributed to the
 15 unit.

16 (c) The amount to be distributed to the unit is the total
 17 innkeeper's taxes that were imposed and collected from within the
 18 unit. The department shall notify the unit's fiscal officer of the
 19 amount of taxes to be distributed to the unit.

20 (d) All distributions from the unit's innkeeper's tax account
 21 shall be made by warrants issued by the auditor of state to the
 22 treasurer of state ordering those payments to the unit.

23 (e) Taxes distributed to a unit under this section may be treated
 24 by each unit as additional revenue to fix its budget for the budget
 25 year during which the revenues are to be distributed to the unit.
 26 Taxes distributed to a unit under this section may be used for one
 27 (1) or more of the following purposes:

28 (1) Reducing the unit's property tax levy for the ensuing
 29 budget year.

30 (2) Providing property tax relief to taxpayers or classes of
 31 taxpayers, to the extent permitted by the Constitution of the
 32 State of Indiana.

33 (3) Paying debt service or lease rentals on:

34 (A) bonds;

35 (B) leases;

36 (C) obligations; or

37 (D) any other evidence of indebtedness of the unit.

38 (4) Paying the costs of any capital project.

39 (5) Use as operating revenue.

40 (6) Paying pension liabilities of the unit.

41 (7) Any other purpose that the fiscal body determines is
 42 necessary, wise, and in the best interests of the residents of the

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unit.

The department of local government finance may not reduce a unit's property tax levy by the amount of the taxes distributed to a unit under this section.

(f) The unit's fiscal body must approve an expenditure of taxes distributed to the unit under this section.

Sec. 10. An innkeeper's tax imposed under this chapter is a listed tax for the purposes of IC 6-8.1.

SECTION 8. IC 6-10 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 10. UNIFORM FOOD AND BEVERAGE TAX

Chapter 1. Applicability

Sec. 1. This article applies to a unit that does not impose a food and beverage tax under IC 6-9.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. Except as otherwise provided, the definitions in IC 36-1-2 apply throughout this article.

Sec. 3. "Beverage" includes an alcoholic beverage.

Sec. 4. "Bonds" has the meaning set forth in IC 5-1-11-1.

Sec. 5. (a) "Capital" refers to any project or program that is capital in nature, involves the formation of capital for funding, or may be capitalized under generally accepted accounting principles.

(b) The term applies to a project or program for the acquisition of real or personal property, creation or improvement of infrastructure, and acquisition, improvement, construction, or installation of buildings, structures, and equipment.

Sec. 6. "Department" means the department of state revenue.

Sec. 7. "Food" includes any food product.

Sec. 8. "Gross retail income" has the meaning set forth in IC 6-2.5-1-5.

Sec. 9. "Obligations" has the meaning set forth in IC 5-1-3-1(b).

Sec. 10. "Operating" refers to an expense that is not capital in nature.

Sec. 11. "Person" has the meaning set forth in IC 6-2.5-1-3.

Sec. 12. "Retail merchant" has the meaning set forth in IC 6-2.5-1-8.

Sec. 13. "Unit" means a county, city, or town. The term does not include a township.

Chapter 3. Food and Beverage Tax

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1 **Sec. 1. (a) After January 1 but before August 1, the fiscal body**
 2 **of a unit may adopt an ordinance to impose an excise tax known as**
 3 **the unit's food and beverage tax on transactions described in**
 4 **section 2 of this chapter.**

5 **(b) Before a fiscal body may adopt an ordinance imposing a food**
 6 **and beverage tax, the fiscal body must hold a public hearing on the**
 7 **proposed ordinance, with notice of the time, date, and place of the**
 8 **public hearing given in accordance with IC 5-3-1.**

9 **(c) If a fiscal body adopts an ordinance under this chapter, the**
 10 **ordinance takes effect January 1 of the year following the year in**
 11 **which the ordinance is adopted.**

12 **(d) This subsection does not apply to a county governed under**
 13 **IC 36-2-3.5. If the fiscal body of a county adopts an ordinance to**
 14 **impose a food and beverage tax under this chapter, the county**
 15 **executive must also adopt a substantially similar ordinance to**
 16 **impose the tax.**

17 **(e) This subsection applies to a county governed under**
 18 **IC 36-2-3.5. If the fiscal body of a county adopts an ordinance to**
 19 **impose a food and beverage tax under this chapter, the county**
 20 **executive must approve the ordinance in the manner prescribed by**
 21 **IC 36-2-4-8 to impose the tax.**

22 **(f) If an ordinance is adopted under subsection (d) or approved**
 23 **under subsection (e), the county executive shall immediately send**
 24 **a certified copy of the ordinance to the department.**

25 **Sec. 2. (a) Except as provided in subsection (c), a food and**
 26 **beverage tax imposed under section 1 of this chapter applies to any**
 27 **transaction in which food or beverage is furnished, prepared, or**
 28 **served:**

- 29 **(1) for consumption at a location, or on equipment, provided**
- 30 **by a retail merchant;**
- 31 **(2) in the unit in which the tax is imposed; and**
- 32 **(3) by a retail merchant for consideration.**

33 **(b) Transactions described in subsection (a)(1) include**
 34 **transactions in which food or beverage is:**

- 35 **(1) served by a retail merchant off the merchant's premises;**
- 36 **(2) food sold in a heated state or heated by a retail merchant;**
- 37 **(3) two (2) or more food ingredients mixed or combined by a**
- 38 **retail merchant for sale as a single item (other than food that**
- 39 **is only cut, repackaged, or pasteurized by the seller, and eggs,**
- 40 **fish, meat, poultry, and foods containing these raw animal**
- 41 **foods requiring cooking by the consumer as recommended by**
- 42 **the federal Food and Drug Administration in chapter 3,**

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subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) A food and beverage tax imposed under this chapter does not apply to furnishing, preparing, or serving any food or beverage in a transaction that is exempt or to the extent the transaction is exempt from the state gross retail tax imposed under IC 6-2.5.

Sec. 3. The food and beverage tax imposed on a food or beverage transaction described in section 2 of this chapter is one percent (1%) of the gross retail income received by the retail merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 4. If no bonds, leases, obligations, or other evidences of indebtedness of a unit that are payable from a food and beverage tax imposed under this chapter are outstanding, the fiscal body that imposed the local food and beverage tax may adopt an ordinance to repeal the food and beverage tax under this chapter. The ordinance must be adopted after January 1 but before September 1 of a year. The fiscal body shall send a certified copy of the ordinance repealing the food and beverage tax to the department.

Chapter 4. Collection Procedures for Food and Beverage Taxes

Sec. 1. A food and beverage tax imposed under IC 6-10-3 shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return that is filed for the payment of the tax may be made on a separate return or may be combined with the return filed for the payment of the state gross retail tax as prescribed by the department.

Sec. 2. A food and beverage tax imposed under IC 6-10-3 is a listed tax for the purposes of IC 6-8.1.

Sec. 3. (a) The department shall notify the fiscal officer of a unit that imposes a food and beverage tax under IC 6-10-3 of the amount of tax paid in the unit.

(b) The amounts received from a food and beverage tax imposed under IC 6-10-3 shall be paid monthly by the treasurer of state on

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warrants issued by the auditor of state to the fiscal officer of the unit that imposed the tax.

Sec. 4. A unit's fiscal officer shall establish a local food and beverage tax revenue fund into which all amounts received monthly from the treasurer of state under this chapter shall be deposited.

Chapter 5. Use of Revenue

Sec. 1. Revenue derived from the imposition of a tax under this article may be treated by each unit as additional revenue to fix its budget for the budget year during which the revenues are to be distributed to the unit.

Sec. 2. A unit may use revenues from the imposition of a tax under this article for one (1) or more of the following purposes:

- (1) Reducing the unit's property tax levy for the ensuing budget year.
- (2) Providing property tax relief to taxpayers or classes of taxpayers, to the extent permitted by the Constitution of the State of Indiana.
- (3) Paying debt service or lease rentals on:
 - (A) bonds;
 - (B) leases;
 - (C) obligations; or
 - (D) any other evidence of indebtedness of the unit.
- (4) Paying the costs of any capital project.
- (5) Use as operating revenue.
- (6) Paying pension liabilities of the unit.
- (7) Any other purpose that the fiscal body determines is necessary, wise, and in the best interests of the residents of the unit.

Sec. 3. The department of local government finance may not reduce a unit's property tax levy by the amount of revenue received from a tax imposed under this article.

Chapter 6. Covenants

Sec. 1. The general assembly covenants with the respective units and the purchasers and owners of bonds, leases, obligations, or any other evidences of indebtedness of a unit payable from a tax imposed under this article that this article will not be repealed or amended in any manner that will adversely affect the imposition or collection of a tax imposed under this article so long as the principal, interest, or lease rentals due under those bonds, leases, obligations, or other evidences of indebtedness of a unit that are payable from a tax imposed under this article remain unpaid.

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